

Senate Study Bill 3061 - Introduced

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT OF
INSPECTIONS AND APPEALS
BILL)

A BILL FOR

1 An Act relating to the practices and procedures of the state
2 public defender.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 13B.4, subsections 2 and 3, Code 2011,
2 are amended to read as follows:

3 2. The state public defender shall file a notice with the
4 clerk of the district court in each county served by a public
5 defender designating which public defender office shall receive
6 notice of appointment of cases. ~~The state public defender may~~
7 ~~also enter into a contract with a nonprofit organization or~~
8 ~~an attorney, designating that the nonprofit organization or~~
9 ~~attorney provide legal services to eligible indigent persons~~
10 ~~as the state public defender's designee.~~ The state public
11 defender may also designate a person admitted to practice law
12 in this state or a nonprofit organization employing persons
13 admitted to practice law in this state to be appointed by the
14 court as a designee of the state public defender. In each
15 county in which the state public defender files a designation,
16 the state public defender's designee shall be appointed by the
17 court to represent all eligible persons or to serve as guardian
18 ad litem for eligible children in juvenile court in all cases
19 and proceedings specified in the designation. The appointment
20 shall not be made if the state public defender or the state
21 public defender's designee notifies the court that the state
22 public defender's designee will not provide services in certain
23 cases as identified in the designation by the state public
24 defender.

25 3. The state public defender may contract with persons
26 admitted to practice law in this state and nonprofit
27 organizations employing persons admitted to practice law in
28 this state for the provision of legal services to indigent
29 persons. The contract may incorporate administrative rules
30 into the terms of the contract or expressly provide that
31 payments may be paid that are other than on an hourly rate
32 basis for legal services provided, including but not limited to
33 a fixed rate per case or per month.

34 Sec. 2. Section 13B.9, subsection 1, paragraphs a and b,
35 Code 2011, are amended to read as follows:

1 a. Represent ~~without fee~~ an indigent person who is under
2 arrest or charged with a crime if the indigent person requests
3 representation or the court orders representation when the type
4 of case, the county, and the court have been designated for
5 such representation by the state public defender. The local
6 public defender shall counsel and defend an indigent defendant
7 at every stage of the criminal proceedings and prosecute
8 before or after conviction any appeals or other remedies which
9 the local public defender considers to be in the interest of
10 justice unless other counsel is appointed to the case.

11 b. Represent an indigent party, ~~without fee and~~ upon an
12 order of the court, in child in need of assistance, family in
13 need of assistance, delinquency, and termination of parental
14 rights proceedings pursuant to chapter 232 ~~in a county served~~
15 ~~by a public defender~~ when designated by the state public
16 defender to represent the indigent party in the type of case
17 for that county. The local public defender shall counsel and
18 represent an indigent party in all proceedings pursuant to
19 chapter 232 ~~in a county served by a public defender~~ to which
20 the local public defender is appointed and prosecute before or
21 after judgment any appeals or other remedies which the local
22 public defender considers to be in the interest of justice
23 unless other counsel is appointed to the case.

24 Sec. 3. Section 13B.9, subsection 4, paragraph a, Code 2011,
25 is amended to read as follows:

26 a. If a conflict of interest arises or if the local public
27 defender is unable to handle a case because of a temporary
28 overload of cases, the local public defender shall return the
29 case to the court. If the case is returned and the state
30 public defender has filed a successor designation, the court
31 shall appoint the successor designee. If there is no successor
32 designee on file, the court shall make the appointment pursuant
33 to section 815.10. As used in this subsection, "*successor*
34 *designee*" may include another local public defender office, or a
35 nonprofit organization or a person admitted to practice law in

1 this state that has contracted with the state public defender
2 under section 13B.4, subsection 3.

3 Sec. 4. Section 602.8107, subsection 1, Code 2011, is
4 amended to read as follows:

5 1. As used in this section, "*court debt*" means all fines,
6 penalties, court costs, fees, forfeited bail, surcharges
7 under chapter 911, victim restitution, ~~restitution for~~
8 court-appointed attorney fees or for expenses of a public
9 defender ordered pursuant to section 815.9, or fees charged
10 pursuant to section 356.7 or 904.108.

11 Sec. 5. Section 814.11, subsection 2, Code 2011, is amended
12 to read as follows:

13 2. a. If the appeal involves an indictable offense or
14 denial of postconviction relief, the appointment shall be made
15 to the state appellate defender unless the state appellate
16 defender notifies the court that the state appellate defender
17 is unable to handle the case.

18 b. If the state appellate defender is unable to handle
19 the case, the state public defender may transfer the case to
20 a local public defender office, nonprofit organization, or
21 private attorney designated by the state public defender to
22 handle these cases. The state appellate defender shall notify
23 the supreme court of the transfer of a case, and upon such
24 notification the responsibility of the state appellate defender
25 in the case terminates.

26 c. If, after transfer of the case to a local public defender
27 office, nonprofit organization, or private attorney, the local
28 public defender, nonprofit organization, or private attorney
29 withdraws from the case, the court shall appoint an attorney
30 who has a contract with the state public defender to provide
31 legal services in appellate cases.

32 Sec. 6. Section 814.11, subsections 3 and 4, Code 2011, are
33 amended to read as follows:

34 3. In a juvenile case ~~in which a petition on appeal is~~
35 required under chapter 232 or a proceeding under chapter 600A,

1 the trial attorney shall continue representation throughout the
2 appeal without an additional appointment order unless the court
3 grants the attorney permission to withdraw from the case. If
4 the court grants the attorney permission to withdraw, the court
5 shall appoint an attorney who has a contract with the state
6 public defender to provide legal services in appellate cases.

7 ~~4. If the state appellate defender is unable to handle the~~
8 ~~case or withdraws from the case, or if the appeal is other~~
9 ~~than an indictable offense or denial of postconviction relief~~
10 ~~including a juvenile case in which a petition on appeal is not~~
11 ~~required or a juvenile case in which the trial attorney has~~
12 ~~withdrawn from the case, In all other cases not specified in~~
13 ~~subsection 2 or 3, or except as otherwise provided in this~~
14 ~~section, the court shall appoint an attorney to represent~~
15 ~~an indigent person who has a contract with the state public~~
16 ~~defender to ~~handle such an appeal~~ provide legal services in~~
17 ~~appellate cases.~~

18 Sec. 7. Section 815.4, Code 2011, is amended by striking the
19 section and inserting in lieu thereof the following:

20 **815.4 Special witnesses for indigents.**

21 1. An application for an expert or other witnesses under
22 Iowa rule of criminal procedure 2.20 shall include a statement
23 attesting that the attorney advised the indigent person of
24 the application, the expected expenses, and the potential for
25 reimbursement of the expenses pursuant to section 815.9.

26 2. *a.* The court shall authorize the securing of a witness
27 prior to the witness incurring any expenses.

28 *b.* The court shall either set in advance a maximum dollar
29 amount of the claim for expenses or approve the final amount of
30 the claim for expenses as reasonable compensation.

31 *c.* The state public defender shall only approve the claim
32 for the expenses of the witness if the securing of the witness
33 was authorized by the court and either the maximum dollar
34 amount of the claim for expenses was set prior to the expenses
35 being incurred or the court has approved the final amount of

1 the claim for expenses as reasonable compensation.

2 3. A witness secured for an indigent person under Iowa rule
3 of criminal procedure 2.20 shall file a claim for compensation
4 with the state public defender as required by the rules of the
5 state public defender, and the claim shall be supported by an
6 itemization specifying the time expended, services rendered,
7 and expenses incurred on behalf of the indigent person.

8 Sec. 8. Section 815.7, subsection 5, Code 2011, is amended
9 to read as follows:

10 5. The expenses shall include any sums as are necessary
11 for investigations in the interest of justice, and the cost of
12 obtaining the transcript of the trial record and briefs if an
13 appeal is filed. The attorney need not follow the case into
14 another county or into the appellate court unless so directed
15 by the court. If the attorney follows the case into another
16 county or into the appellate court, the attorney shall be
17 entitled to compensation as provided in this section. Only one
18 attorney fee shall be so awarded in any one case except that in
19 class "A" felony cases, two may be authorized if both attorneys
20 are appointed pursuant to section 815.10.

21 Sec. 9. Section 815.9, subsection 3, Code 2011, is amended
22 to read as follows:

23 3. If a person is granted an appointed attorney, the
24 person shall be required to reimburse the state for the total
25 cost of legal assistance provided to the person pursuant to
26 this section. "Legal assistance" as used in this section
27 shall include not only the expense of the public defender or
28 an appointed attorney, but also transcripts, witness fees,
29 expenses, and any other goods or services required by law to
30 be provided to an indigent person entitled to an appointed
31 attorney.

32 Sec. 10. Section 815.9, subsections 4, 5, 6, 7, and 9, Code
33 2011, are amended by striking the subsections and inserting in
34 lieu thereof the following:

35 4. a. If the appointed attorney is a public defender, the

1 attorney shall submit a report to the court specifying the
2 total hours of service plus expenses incurred in providing
3 legal assistance to the person. In a criminal case, the report
4 shall be submitted within ten days of the date of sentencing,
5 acquittal, or dismissal. In a case other than a criminal case,
6 the report shall be submitted within ten days of any court
7 ruling or the conclusion of a trial held in the case, or if the
8 case is dismissed within ten days of the dismissal.

9 *b.* If the appointed attorney is a private attorney or is
10 employed by a nonprofit organization, the state public defender
11 shall report to the clerk of the district court the amounts
12 of any approved claims for compensation and expenses paid on
13 behalf of a person receiving legal assistance after such claims
14 have been reviewed and paid by the state public defender.

15 5. If the person receiving legal assistance is convicted in
16 a criminal case, the total costs and fees incurred for legal
17 assistance shall be ordered paid when the reports submitted
18 pursuant to subsection 4 are received by the court, and the
19 court shall order the payment of such amounts as restitution
20 or order the performance of community service in lieu of such
21 payments, in accordance with chapter 910.

22 6. If the person receiving legal assistance is acquitted in
23 a criminal case or is a party in a case other than a criminal
24 case, the court shall order the payment of all or a portion of
25 the total costs and fees incurred for legal assistance, to the
26 extent the person is reasonably able to pay, after an inquiry
27 which includes notice and reasonable opportunity to be heard.

28 7. When ordering payment of all or a portion of the total
29 costs and fees incurred for legal assistance under subsection
30 6, the court may order payment of the costs and fees in
31 reasonable installments as provided in section 909.3, or may
32 order the entire amount due and payable. If any costs and fees
33 are not paid at the time specified in the order of the court,
34 a judgment shall be entered against the person for any unpaid
35 amount. Such judgment may be enforced by the state in the same

1 manner as a civil judgment.

2 9. Notwithstanding subsections 3 and 6, a minor granted a
3 court-appointed attorney or guardian ad litem under section
4 232.11 in a juvenile proceeding shall not be ordered to
5 reimburse costs and fees incurred for legal assistance except
6 as otherwise provided in chapter 232.

7 Sec. 11. Section 815.10, subsections 1 and 2, Code 2011, are
8 amended to read as follows:

9 1. a. The court, for cause and upon its own motion or
10 upon application by an indigent person or a public defender,
11 shall appoint the state public defender's designee pursuant
12 to section 13B.4 to represent an indigent person at any stage
13 of the criminal, postconviction, contempt, commitment under
14 chapter 229A, termination under chapter 600A, detention under
15 section 811.1A, competency under chapter 812, parole revocation
16 if applicable under section 908.2A, or juvenile proceedings or
17 on appeal of any criminal, postconviction, contempt, commitment
18 under chapter 229A, termination under chapter 600A, detention
19 under section 811.1A, competency under chapter 812, parole
20 revocation under chapter 908, or juvenile action in which the
21 indigent person is entitled to legal assistance at public
22 expense. However, in juvenile cases, the court may directly
23 appoint an existing nonprofit corporation established for and
24 engaged in the provision of legal services for juveniles. An
25 appointment shall not be made unless the person is determined
26 to be indigent under section 815.9. ~~Only one attorney shall~~
27 ~~be appointed~~

28 b. An indigent person is entitled to the appointment of
29 one attorney in all cases, except that in class "A" felony
30 cases the court may appoint two attorneys. However, in a class
31 "A" felony case, a person who is represented by a privately
32 retained attorney or by an attorney who has agreed to represent
33 the person is not entitled to have an attorney appointed to
34 represent the person based upon the indigence of the person.

35 2. If the state public defender or the state public

1 defender's designee is unable to represent an indigent person,
2 the court shall appoint an attorney who has a contract with the
3 state public defender to represent the person in the particular
4 type of case and in the county in which the case is pending.

5 Sec. 12. Section 815.10A, subsection 3, Code 2011, is
6 amended to read as follows:

7 3. a. An attorney shall obtain court approval prior
8 to exceeding the fee limitations established by the state
9 public defender pursuant to section 13B.4. An attorney may
10 exceed the fee limitations if good cause for exceeding the fee
11 limitations is shown. An attorney may obtain court approval
12 after exceeding the fee limitations if good cause excusing
13 the attorney's failure to seek approval prior to exceeding
14 the fee limitations is shown. However, failure to file an
15 application to exceed a fee limitation prior to exceeding the
16 fee limitation does not constitute good cause. The order
17 approving an application to exceed the fee limitations shall
18 be effective from the date of filing the application unless
19 the court order provides an alternative effective date. The
20 application and the court order approving the application to
21 exceed fee limitations and any other order affecting the amount
22 of compensation or reimbursement shall be submitted with any
23 claim for compensation.

24 b. Except for an application to exceed fee limitations
25 by an attorney or guardian ad litem representing a juvenile
26 in a juvenile proceeding, an application by an attorney to
27 exceed fee limitations shall include a statement signed by
28 the client of the attorney, consenting to the application and
29 acknowledging that the client will be required to reimburse
30 the state for the total costs and fees incurred for the legal
31 assistance provided to the extent the client is reasonably able
32 to pay. This requirement cannot be waived by the court.

33 Sec. 13. Section 815.14, Code 2011, is amended to read as
34 follows:

35 **815.14 Fee for public defender.**

1 ~~When determining the~~ The amount of restitution for the
2 expense of the public defender for each case under section
3 ~~910.3, the expense of the public defender or the total cost of~~
4 legal assistance required to be reimbursed under section 815.9,
5 subsection 3, shall be include all expenses incurred in the
6 representation of the person combined with the attorney fees
7 for the public defender calculated at the same hourly rate of
8 compensation specified under section 815.7. ~~However, the~~ The
9 expense of the public defender shall not may exceed the fee
10 limitations established in section 13B.4.

11 EXPLANATION

12 This bill relates to the practices and procedures of the
13 state public defender.

14 The bill specifies that the state public defender may
15 designate a person admitted to practice law in this state or a
16 nonprofit organization employing persons admitted to practice
17 law in this state to be appointed by the court as a designee of
18 the state public defender. Current law provides that the state
19 public defender may enter into a contract with an attorney or a
20 nonprofit organization to serve as the designee of the state
21 public defender.

22 The bill allows a contract between the state public defender
23 and an attorney or a nonprofit organization to incorporate
24 administrative rules into the terms of the contract or
25 expressly provide payment terms that include payments at a
26 fixed rate per case or per month.

27 The bill strikes provisions stating that the public defender
28 shall represent a person without charging a fee.

29 Under the bill, if the court orders the local public defender
30 to represent an indigent person, the order shall be for the
31 type of case, in a county, and in a court designated by the
32 state public defender.

33 If it becomes necessary to appoint a successor designee to
34 represent an indigent person because the local public defender
35 is unable to handle the case, the bill allows the successor

1 designee to be a person admitted to practice law in this state
2 who has a contract with the state public defender. Current
3 law specifies the successor designee may include another local
4 public defender office or a nonprofit organization.

5 The bill specifies that if the state appellate public
6 defender is unable to handle an appeal, the state public
7 defender may transfer the appellate case to a local public
8 defender office, nonprofit organization, or private attorney
9 designated by the state public defender to handle the appeal.
10 If, after the transfer of an appellate case to a local public
11 defender office, nonprofit organization, or private attorney,
12 the entity withdraws from the appellate case, the court shall
13 appoint an attorney who has a contract with the state public
14 defender to provide legal services in appellate cases.

15 The bill provides that in a juvenile case or in a termination
16 of parental rights proceeding under Code chapter 600A where the
17 court grants the trial attorney permission to withdraw from the
18 case during the appeal, the court shall appoint an attorney who
19 has a contract with the state public defender to provide legal
20 services in appellate cases. The bill further specifies that
21 in all other cases involving an appeal by an indigent person,
22 except as otherwise provided in Code section 814.11, the court
23 shall appoint an attorney who has a contract with the state
24 public defender to provide legal services in appellate cases.

25 The bill makes changes to securing a special witness for
26 an indigent person. Under the bill, an application for a
27 special witness shall include a statement attesting that the
28 attorney advised the indigent person of the application, the
29 expected expense, and that the indigent person may be required
30 to reimburse the state for the expense of the special witness.

31 The bill provides that the court shall authorize the
32 securing of a special witness and set the maximum amount of the
33 expenses prior to the special witness incurring any expenses or
34 approve the final amount of the claim of the special witness
35 as reasonable compensation. The bill provides that the state

1 public defender shall only approve the claim for the expenses
2 of the special witness if the securing of the special witness
3 was authorized by the court and either the maximum dollar
4 amount of the claim for expenses was set prior to the expenses
5 being incurred or the court has approved the final amount of
6 the claim for expenses as reasonable compensation.

7 The bill specifies that two separate attorney fees may
8 be awarded in a class "A" felony case if both attorneys are
9 appointed pursuant to Code section 815.10.

10 The bill specifies that an indigent person shall be
11 required to reimburse the state for the total cost of the
12 legal assistance provided, including the expense of the public
13 defender.

14 Under the bill, if an appointed attorney is a public
15 defender, the attorney shall submit a report specifying
16 the total hours of legal services provided plus expenses
17 incurred representing an indigent person, within 10 days of
18 sentencing, acquittal, or dismissal. In cases where the
19 attorney representing an indigent person is a private attorney
20 or is employed by a nonprofit organization, the bill requires
21 the state public defender to report to the clerk of the
22 district court the amount of the approved claim paid to the
23 private attorney or nonprofit organization on behalf of the
24 indigent person. The bill specifies the court shall order the
25 total costs and fees incurred for legal assistance provided
26 to an indigent person be paid as restitution, or order the
27 performance of community service in lieu of paying restitution.

28 The bill provides that if an indigent person receiving legal
29 assistance is acquitted in a criminal case or is a party in
30 a case other than a criminal case, the court shall order the
31 indigent person to pay a portion or all of the total costs
32 and fees incurred for the legal assistance, to the extent
33 the indigent person is reasonably able to pay. The bill
34 also provides that the total costs and fees may be paid in
35 reasonable installments pursuant to Code section 909.3.

1 The bill states a minor granted a court-appointed attorney
2 or guardian ad litem shall not be ordered to reimburse costs
3 and fees incurred for legal assistance provided on behalf of
4 the minor in a juvenile proceeding.

5 In a class "A" felony case, the bill specifies that a person
6 who is represented by a privately retained attorney or by an
7 attorney who has agreed to represent the person is not entitled
8 to have an attorney appointed to represent the person based
9 upon the indigence of the person.

10 Except for an application to exceed fee limitations by an
11 attorney or guardian ad litem for representing a juvenile in
12 a juvenile proceeding, the bill requires an application by
13 an attorney to exceed fee limitations to include a statement
14 signed by the client of the attorney, consenting to the
15 application and acknowledging that the client will be required
16 to reimburse the state for the total costs and fees incurred
17 for the legal assistance provided to the extent the client is
18 reasonably able to pay.

19 The amount of restitution an indigent person reimburses the
20 state for the expense of the public defender under the bill
21 shall include all expenses incurred during the representation
22 of the person combined with the attorney fees calculated at the
23 hourly rates in Code section 815.7. The bill also permits the
24 expense of the public defender to exceed the fee limitations
25 established in Code section 13B.4.